

WORKER PROTECTIONS – ZONING ORDINANCES

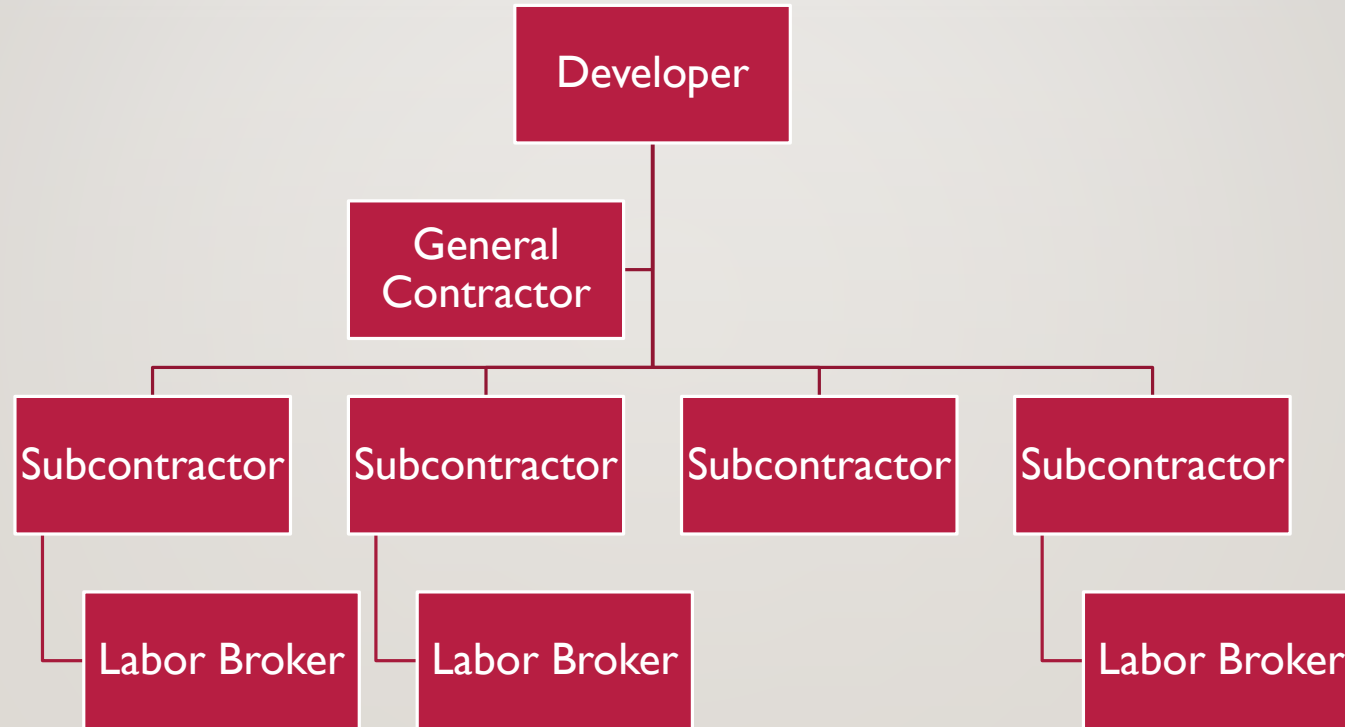
PREVENTING WAGE THEFT IN THE CONSTRUCTION INDUSTRY



WHAT IS WAGE THEFT?

- Wage theft:
 - failure to pay a worker all wages due.
 - Examples:
 - Paying less than minimum wage
 - Failure to pay overtime
 - Failure to pay entirely
 - Illegal deductions
 - Failure to pay for portion of work
- Misclassification:
 - illegally classifying a worker as an independent contractor as opposed to an employee for the purpose of evading the payment of payroll taxes, unemployment insurance, and workers compensation premiums, and maintaining a competitive advantage over law-abiding companies.

WAGE THEFT: A BUSINESS MODEL



WAGE THEFT: STUDIES

- JLARC Report: Over 33% of construction companies cheat their workers.
- Virginia Employment Commission: Over 400,000 Virginians are cheated out of wages every year.
- Smart Cities Prevail: Construction Industry Wage Theft costs the taxpayer over \$8 billion dollars per year

WAGE THEFT: RAMPANT IN THE CONSTRUCTION INDUSTRY – SAMPLE OF ARLINGTON, VA PROJECTS

Contractor	Jobsite	Wage Theft History
Manganaro Mid-Atlantic	1770 Crystal Dr	Wage Theft lawsuit alleges hundreds of thousands of dollars not paid.
Hitt Contracting	1901 S Bell St 800 N Glebe St	Lawsuit: Over \$1 million paid to workers in recent wage theft lawsuit
Rock Springs Contracting	1901 S Bell St 1500 Wilson Blvd 4040 N Fairfax 800 N Glebe St	DC Attorney General: \$300K stolen from workers in wage theft scheme
Power Design	3400 S Clark St 400 N Fairfax St 750 N Glebe Rd 1201 S Rhodes St 4100 Wilson Blvd 1225 First St 1555 Wilson Blvd 1800 N Lynn St 3251 Washington Blvd 2121 N Westmoreland	DC Attorney General: \$2.75 million settlement for wage theft.
Capital Drywall	2101 Wilson Blvd 1201 Wilson Blvd 3100 Clarendon Blvd 4201 Wilson Blvd	DC Attorney General: Capital Drywall must pay \$200K in penalties for wage theft.

WORKER TESTIMONIALS

“The first time I got a check, [the broker] said don’t go to a bank . . . he’d text me an address where I was supposed to bring my check. It was at a house, late at night,” said the carpenter, who spoke on the condition of anonymity because he feared losing his job. “He paid me with cash and out of that cash money, he took some away, \$12 to \$15 at first. He took a bigger fee every time.”

- Washington Post, 12/12/2019

WORKER TESTIMONIALS

"If I were to get into an accident, if something happens to me, there's no one that can give me a hand - and then I can't bring food home."

- Construction worker

- Virginia Public Media, 09/30/2020



Check stub from Crystal Home Services LLC check # [REDACTED] 2019, in the amount of \$720 as payment to drywall carpenter for work on the [REDACTED] project at 1770 Crystal Drive. The drywall carpenter is being treated as an “independent contractor” and was instructed to cash the check at an address on a rented apartment located at 8139 Prescott Dr. Vienna VA 22180.

SOLUTION:WORKER PROTECTION AGREEMENTS

- Worker protection agreements may take many forms and can suit the needs of the developer. Options include:
 - A company creating an internal responsible contractor policy;
 - A direct agreement with one or more labor organizations;
- Worker protection agreements inoculate against wage theft by ensuring all contractors and subcontractors:
 - Meet minimum standards before being eligible to bid work;
 - Do not use independent contractors unless approved by the developer/end user;
 - Pay no less than the average area wage and standard;
 - Follow a process by which wage theft is monitored and can be corrected if it does occur on the job, via a neutral third party administrator.

LEGISLATIVE SOLUTIONS

- SB839 (2020)
 - Authorizes a locality to include in its zoning ordinance certain conditions as part of the grant of a special exception that permits development at a floor area ratio (FAR) greater than 1.0 or 25 units per acre, or requires the construction of or improvements to public facilities, public roads, or other publicly owned or managed areas.
 - Such conditions may require a developer, directly or through its contractors, to enter into binding contractual commitments that provide certain protections for the skilled and unskilled workers hired to build the development project.

WORKER PROTECTION AGREEMENTS

- Ensure a well-trained, competitive workforce
- Prevent against wage theft
- Do not increase the cost of a construction project, nor do they increase the cost of affordable housing.
- Are used by a number of Fortune 500 Companies and Investment Funds, including:
 - Blackrock Real Assets
 - Toyota
 - Allianz Global Investments
 - Amazon HQ2

WHAT THE LEGISLATION DOES NOT DO:

- Increase the cost of affordable housing.
- Dramatically alter the zoning ordinance.
- Apply to projects below 1.0 Floor-to-Area ratio or 25 units per acre.
- Apply to any project without a special exemption.

CONTACT INFORMATION

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